Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Business Data Services in an Internet Protocol Environment	)	WC Docket No. 16-143
	)	
	)	
Special Access for Price Cap Local Exchange Carriers	)	WC Docket No. 05-25
	)	
	)	
AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services	)	RM-10593

COMMENTS OF ALASKA COMMUNICATIONS

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COMMENTS OF ALASKA COMMUNICATIONS

Alaska Communications[1] hereby submits these comments in response to the Commission's Further Notice of Proposed Rulemaking (the "Further Notice") in the above-captioned proceedings.[2] The record compiled by the Commission in these proceedings to date demonstrates that special access competition remains robust in the Anchorage, Fairbanks, and Juneau markets served by Alaska Communications. As such, the Commission should not impose new regulation of business data services ("BDS") for any speed, customer class, service type, or geographic region within those areas.

Outside of these three core population centers, competition diminishes. Particularly, in the Alaskan Bush,[3] the state's largest telecommunications service provider, General

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[1] In these comments, "Alaska Communications" signifies the four incumbent local exchange carrier ("ILEC") subsidiaries of Alaska Communications Systems Group, Inc.: ACS of Alaska, LLC, ACS of Anchorage, LLC, ACS of Fairbanks, LLC, and ACS of the Northland, LLC, as well as ACS Long Distance, LLC and ACS Internet, LLC.

[2] *Business Data Services in an Internet Protocol Environment*, WC Docket No. 16-143, Tariff Investigation Order and Further Notice of Proposed Rulemaking, FCC 16-54 (rel. May 2, 2016).

[3] Conceptually, Alaska can be viewed as having three broad regions that each present different challenges to telecommunications service providers: the state's three population centers, Anchorage, Fairbanks and Juneau; rural areas connected to one or more of those population

Communication, Inc. ("GCI") operates in many areas as a federally funded, unregulated monopolist with respect to long haul transport services that are essential to provide BDS. As such, if the Commission does determine that new regulation is needed, it should regulate BDS only where unregulated monopolies exist today, *i.e.*, in the Bush locations that lack competition for the long haul transport services needed to provide BDS, and should regulate only the largest provider of these services in the state, GCI.

Background and Summary

Although Alaska Communications meets the definition of an incumbent local exchange carrier ("ILEC") set forth in Section 2521(h)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 251(h)(1), the Regulatory Commission of Alaska ("RCA") determined a decade ago that Alaska Communications is a non-dominant carrier in its Anchorage, Fairbanks, and Juneau service areas, and has granted significant regulatory relief in most of its service territory, including with respect to its pricing of local exchange services.[4] It has done so based on evidence that Alaska Communications is subject to vigorous competition in its service areas from larger

centers using the state's road system; and "Bush" communities. "Bush" communities are isolated geographically from infrastructure resources commonly available elsewhere in the state, and the nation as a whole. Most Bush communities cannot be accessed by road, and are not connected to the state's power grid. To reach these communities, people, as well as goods and services, must arrive by plane, barge, snow machine, all-terrain vehicle, or other off-road transportation means. Communications services in these communities generally rely on satellite, or possibly microwave, transport links to population centers in Anchorage, Fairbanks, or Juneau. More than half of ACS's wire centers are dedicated to serving some 49 Bush communities that are off the road system and disconnected from statewide electrical power networks.

[4] *See, e.g., Implementation Issues Related to New Local Exchange Carrier Policies in the Anchorage, Fairbanks, Juneau, and Fort Wainwright Markets*, Docket U-05-55, Order Addressing Dominant Carrier Issues, Accepting Late Filing and Granting Motion for Decision, Order No. 3 (Feb. 22, 2006) ("*RCA 2006 Nondominant Treatment Order*").

and better funded competitors, has seen its market share drop precipitously, and therefore lacks market power.

Among the competitors to Alaska Communications are GCI, the state's largest provider of wireline telecommunications, cable television and broadband Internet access services, and the wireless service provider with the broadest geographic coverage in the state; AT&T, one of the world's largest telecommunications service providers and the state's largest mobile wireless service provider by number of customers; Verizon Wireless, which launched service in the state in June 2013, and is therefore only minimally reflected in the special access data collected by the Commission;[5] and other national and regional industry participants. Moreover, additional new entrants are now deploying facilities and are poised to offer additional competitive alternatives.

Indeed, both this Commission and the RCA have consistently recognized that Alaska Communications' Anchorage, Fairbanks, and Juneau service areas are among the most competitive in the nation.[6] Competition in Alaska's telecommunications markets has grown ever

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[5] *See Alaska Business*, Verizon Takes Next Step in Alaska Journey" (June 5, 2013), *available at:* http://www.akbizmag.com/Alaska-Business-Monthly/June-2013/Verizon-Takes-Next-Step-in-Alaska-Journey/.

[6] *See, e.g., Petition of ACS of Anchorage, Inc., ACS of Alaska, Inc., and ACS of Fairbanks, Inc. for Pricing Flexibility Pursuant to Sections 69.709 and 69.711 of the Commission's Rules*, WCB/Pricing File No. 10-02, Order, DA 10-1007, 25 FCC Rcd 7128 (Wir. Comp. Bur. 2010), at ¶ 12 (competitive triggers met for Phase I and Phase II pricing flexibility) ("*Alaska Pricing Flexibility Order*"); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area*, WC Docket No. 06-109, Memorandum Opinion and Order, FCC 07-149, 22 FCC Rcd 16304 (2007), at ¶ 3 ("ACS faces extraordinary facilities-based competition in the Anchorage market"); *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Sections 251(c)(3) and 252(d)(1) in the Anchorage Study Area*, WC Docket No. 05-281, Memorandum Opinion and Order, FCC 06-188, 22 FCC Rcd 1958 (2006), at ¶ 20 (finding sufficient

more fierce over the two decades since the enactment of the Telecommunications Act of 1996, in terms of both geographic scope and product offerings, creating benefits for customers. BDS customers now have competitive choice in service providers throughout Alaska's population centers of Anchorage, Fairbanks, and Juneau, and their surrounding areas. Thus, no new regulation is needed in those markets.

In 2010, following the company's conversion to price cap regulation,[7] the Commission granted Alaska Communications Phase I and Phase II pricing flexibility for its ILEC service areas located in the Anchorage Metropolitan Statistical Area ("MSA"), the Fairbanks MSA, and its Juneau (non-MSA) study area.[8] While the Commission has now decided to adopt new triggers for price cap ILEC pricing flexibility for business data services ("BDS") nationwide, the Commission has never suggested that its underlying assessment for Anchorage, Fairbanks or Juneau – that the market is, in fact, sufficiently competitive to warrant regulatory flexibility – requires reexamination. Indeed, as discussed herein, the overwhelming evidence continues to

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facilities-based competition to grant in part forbearance from obligations to provide unbundled access to loop, copper subloop, and transport elements in certain wire centers in Anchorage), ¶ 28 (finding that "[r]etail competition in the Anchorage study area is robust"); *ATU Telecommunications Request for Waiver of Sections 69.106(b) and 69.124(b)(1) of the Commission's Rules*, File No. CPD 98-40, Order, FCC 00-379, 15 FCC Rcd 20655 (2000), at ¶ 14 (granting waiver request after finding that "the level of competition in the Anchorage market is sufficient to conclude that special circumstances exist"); *Commission Review of Rules and Regulations Governing Telecommunications Rates, Charges Between Competing Telecommunications Companies and Competition in Telecommunications, Order Adopting Regulations*, RCA Docket No. R-03-03 (June 22, 2005) (finding by the Regulatory Commission of Alaska that the retail local exchange market in Anchorage is competitive and adopting regulations under which ACS is considered non-dominant).

[7] *ACS of Alaska, Inc., ACS of Anchorage, Inc., ACS of Fairbanks, Inc., and ACS of the Northland, Inc.*, Petition for Conversion to Price Cap Regulation and Limited Waiver Relief, WC Docket No. 08-220, Order, DA 09-854, 24 FCC Rcd 4664 (Wir. Comp. Bur. 2009).

[8] *See Alaska Pricing Flexibility Order* at ¶ 19 (finding that Alaska Communications had demonstrated that the Phase I and Phase II competitive triggers were met).

point to a fully functioning competitive market for BDS in Alaska Communications' Anchorage, Fairbanks, and Juneau service areas.

Thus, rather than rolling back ILEC pricing flexibility in Alaska, the Commission should continue to move forward, completing the process of deregulating all BDS in the Anchorage, Fairbanks, and Juneau markets where Alaska Communications has already received Phase I and Phase II pricing flexibility.

Outside of those markets, competition diminishes gradually, with GCI gaining increasing market power as a result of its exclusive ownership and control of a federally funded network of terrestrial long haul transport facilities in the state, which it operates in many areas as an unregulated monopolist, contrary to the public interest. Thus, to the extent that the Commission determines that price regulation of BDS is warranted in rural or Bush areas of the state, it should impose that regulation on the state's largest provider of these services, GCI.

Discussion

I. The Commission Should Not Regulate BDS in Alaska's Urban Markets

The Further Notice seeks extensive comment on appropriate and technologically neutral definitions of the product and geographic market (or markets) for BDS, as a foundation for the application of a newly-designed competitive market test that, in turn, seeks to "identify where market power exists in BDS markets."[9] As discussed herein, both the Commission and the RCA have long recognized that the Alaska Communications' Anchorage, Fairbanks, and Juneau service areas are among the most competitive in the nation. No matter how the Commission defines the appropriate geographic and product markets, the Commission should recognize that

[9] Further Notice at ¶ 187.

there is no ongoing need for *ex ante* price regulation of BDS in these Alaska Communications service areas.

A. Alaska Communications and GCI Are Fiercely Competitive for All Customers, Across the Entire Geography, and for All Speeds and Types of Service

Investors formed Alaska Communications in 1999 through the privatization of the former Anchorage Telephone Utility from the Municipality of Anchorage, which they combined with other local exchange carriers purchased from CenturyTel (as it was then called), which served Fairbanks, Juneau, and dozens of small rural and Bush communities in Alaska. At the time, Alaska Communications served more than 300,000 access lines statewide.[10]

Since that time, Alaska's communications markets have continually grown more competitive. Today, Alaska Communications served approximately 114,000 access lines as of December 30, 2015, and fewer than 77,000 of these are business customers.[11] Many former Alaska Communications customers have switched to GCI's facilities-based competitive platform. As of December 30, 2015, GCI reported a total of 127,300 residential cable modem subscribers and 50,400 residential access lines in service, as well as 12,700 business cable modem subscribers and 46,600 business access lines in service[12] – nearly as many business customers, and far more total

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[10] *See* Heather E. Hudson, *Connecting Alaskans* (Univ. of Alaska Press 2015), at 187.

[11] News Release, "Alaska Communications Reports Strong Fourth Quarter and Year-End 2015 Results," at Schedule 7 (rel. Mar. 3, 2016).

[12] News Release, "GCI Reports Fourth Quarter 2015 Financial Results," Attachment, "Key Performance Indicators," *available at:* http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle&ID=2145340 (links to "Press Release Financials," *available at:* http://hugin.info/158732/R/1991002/731676.pdf). Based on these results, GCI has won over half the residential wireline local access market, even putting aside its large number of wireless customers, many of whom are wireless-only users, based on the CDC survey results.

wireline connections than Alaska Communications. In addition to these wireline customers, GCI serves approximately 462,000 wireless subscribers statewide.[13]

These figures are consistent with GCI's claim that it "has grown to become the largest telecommunications provider in Alaska with more than 2,200 employees and almost $1 billion in revenues."[14] Specifically with respect to BDS, GCI boasts that its network has "the broadest reach of any network in the state, along with fast, reliable connections to the continental U.S. and the rest of the world."[15] GCI's services "are connected through company-owned fiber optic, satellite and metropolitan area network facilities to the Lower 48 states. This broadband platform . . . allows [GCI] to provide customized services to the Alaska market."[16]

It is plain that GCI's competitive presence is more than sufficient to obviate the need for dominant carrier regulation and refutes any suggestion of market power for any telecommunications service provider in Alaska Communications' Anchorage, Fairbanks, and Juneau service areas. More than a decade ago, the RCA found that ACS of Anchorage, ACS of Fairbanks, and ACS of Alaska in its Juneau study area should be treated as non-dominant in the intrastate jurisdiction, with minor exceptions, as a result of facilities-based competitive entry in those markets, with the largest competitor being GCI.[17]

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[13] *Id.* (reporting $60.1 million in fourth quarter wireless revenue, and $43.37 average monthly revenue per subscriber.)

[14] GCI, "Executive Team," *available at:* https://www.gci.com/about/executiveteam (visited June 27, 2016) (biography of Ron Duncan, President, CEO, and Co-Founder).

[15] GCI, "Network Design," *available at:* https://www.gci.com/business/services/networks/network-design (visited June 27, 2016).

[16] *See:* https://www.gci.com/about.

[17] *See RCA 2006 Nondominant Treatment Order*. In that proceeding, the RCA found that GCI held a market share between 28 percent and 38 percent in all three markets. *Id.* at Table 2. Since that time, GCI's market share has continued to grow. *See supra* note 12.

Earlier this year, the RCA extended non-dominant treatment to line extension services, construction services, and subdivision services agreements offered by ACS of Anchorage ("ACS-AN"), based on a review of current market data.[18] The RCA explained that:

> ACS-AN and GCI have a **nearly equal division of facilities and essentially parallel networks** that could potentially serve a nearly equal number of potential service connections. We find ACS-AN no longer has the dominant market share and there are few barriers to entry in competition for service in the Anchorage service area. Additionally, customers now have a number of reasonably substitutable services and access to alternative competitive facilities via GCI, wireless, and VOIP carriers.[19]

Because Alaska Communications and GCI have essentially equal ability to serve every business in Anchorage, and with the additional competitive presence of AT&T Alascom and other providers, there is no basis for concluding that the Anchorage market is less than fully competitive for BDS.

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[18] *Petition Filed by ACS of Anchorage, LLC d/b/a Alaska Communications Systems, Alaska Communications, ACS Local Service, and ACS to be Reclassified as a Nondominant Carrier in Its Provision of Line Extension Services, Construction Services, Access Services, and Subdivision Services Agreements*, Docket No. U-15-139, Order Granting Amended Petition to Reclassify as a Non-Dominant Carrier, Denying Request for Data Requests, and Closing Docket, Order No. 3 (June 6, 2016). Alaska Communications withdrew its request for nondominant treatment with respect to interexchange carrier access services, not because relief was not warranted based on competitive conditions, but because "[s]witched and special access services provided by local exchange carriers to interexchange carriers are wholesale not retail services." *Id.*, ACS of Anchorage Amendment to Reclassification Petition To Remove Access (filed Feb. 3, 2016), at 1.

[19] Order U-15-139(3), at 7 (emphasis added). The data before the RCA showed that: "ACS-AN's facilities could potentially serve roughly 126,000 homes and businesses within the Anchorage service area while GCI's facilities could potentially serve 117,159 homes and businesses. ACS-AN also states that it provides local exchange phone service to approximately 40,800 lines in the Anchorage service area, all on its own facilities. In comparison, GCI states it provides local exchange phone service to approximately 57,400 lines in the Anchorage service area; 49,800 of those lines are served entirely on GCI's own facilities and the remaining 7,600 are served wholly or partially on the facilities of ACS-AN. It is apparent . . . that ACS-AN does not own the only facilities used to provide local exchange service to the majority of customers in the Anchorage service area and is therefore a non-dominant carrier." *Id.*

In recent years, Alaska Communications has worked to recoup lost market share from GCI, and has been forced to price its BDS services aggressively. The majority of Alaska Communications' BDS contract "wins" involving these urban markets frequently require fiber build outs that are aggressively priced at the margin to compete with GCI's existing fiber network.

The special access data submitted in this proceeding only confirm the conclusion that the BDS markets in Alaska Communications' Anchorage, Fairbanks, and Juneau service areas are highly competitive. Since the FCC granted Alaska Communications Phase I and Phase II pricing flexibility in 2010, the market for special access and other BDS has continued to grow even more competitive in Alaska. Compass Lexecon analyzed one Alaska Communications MSA included in the special access data set, and found that 99.5 percent of all businesses it encompassed that are located in census blocks where there is demand for BDS are served by one or more facilities-based (*i.e.*, non-UNE-based) competitive providers, based on a combination of the special access data submitted in this proceeding and information on DOCSIS 3.0 services shown on the National Broadband Map.[20] Compass Lexecon also found comparable competitive coverage in Fairbanks and Juneau.[21] Even excluding the National Broadband Map data, the Compass Lexecon analysis shows that the some 86.2 percent of businesses in the Alaska Communications MSA included in the study where there is special access demand have a choice of one or more facilities-based (*i.e.*, non-UNE-based) competitive providers, based solely on the data submitted

[20] Letter from Kyle J. Fiet, Sidley Austin LLP, WC Docket No. 05-25 (filed April 7, 2016), Attachment: M. Israel, D. Rubinfeld & G. Woroch, Compass Lexecon, "Competitive Analysis of the FCC's Special Access Data Collection" (Jan. 28, 2016), at Table C-MSA.

[21] *Id.* at 16, n.33.

in response to the Commission's special access data request,[22] again with similar results for Fairbanks and Juneau.

B. Best Efforts Services Are Part of the BDS Product Market

As a foundation for the new competitive market analysis, the Further Notice proposes a definition of BDS as a service that:

> transports data between two or more designated points at a rate of at least 1.5 Mbps in both directions (upstream/downstream) with prescribed performance requirements that typically include bandwidth, reliability, latency, jitter, and/or packet loss. BDS does not include "best effort" services, e.g., mass market BIAS such as DSL and cable modem broadband access.

This definition rests in part on the Commission' earlier statement that it is "likely that best efforts services may not be in the same product market or markets as BDS."[23] In support, the Commission observed that, "[i]f two readily available services have substantially different prices, then they are likely dissimilar (otherwise buyers would prefer the cheaper service, which would constrain the price of the other service)."[24]

In Alaska Communications' experience, this observation is significantly overstated. Particularly at the small business end of the market, many customers *are* in fact willing to substitute best efforts business Internet access services for BDS that include more rigorous service level agreement ("SLA") metrics, precisely because there are significant cost savings in doing so. This conclusion is supported by the Business Customer Survey commissioned by the United States Telecom Association ("USTelecom"), and discussed more fully in that organization's comments. Business customers' willingness to use best effort services in place of those more

[22] *Id.* at Table F-MSA.

[23] Further Notice at ¶ 191.

[24] *Id.* at ¶ 192.

expensive options with guaranteed performance is especially evident in lower bandwidth BDS services such as those between 1.5 and 45 Mbps where the "need to support mission critical applications requiring symmetrical bandwidth, increased reliability, security, and service to more than one location" is far lower.[25]

Thus, Alaska Communications believes that the proposed definition of BDS is flawed. Alaska Communications' experience reveals that the Commission's definition of BDS should be flexible enough to include all offerings that customers perceive as reasonable substitutes, including (at the smaller end of the size scale, at a minimum), best efforts services. This is not to suggest that best efforts services should be subject to additional regulation. Rather, because some business customers, particularly small businesses, sometimes view best efforts services as a substitute for IP-based services that carry more rigorous SLAs, neither should be regulated in competitive markets.

C. In Alaska, Two Competitors Suffice For An Effective Competitive Market

Observing that the Commission found a duopoly market was not sufficiently competitive in the *Qwest Phoenix Order*,[26] the Further Notice seeks comment on whether to require "more than two facilities-based competitors in any area for a competitive trigger."[27] The number of competitors whether it be two or twenty is a proxy for the ability of the market to constrain prices to the level where an efficient carrier can just earn a reasonable return. While cited analysis indicates that this result is more likely with a greater number of competitors, experience

[25] *Id.* at ¶ 13.

[26] Further Notice at ¶ 294 (*citing Petition of Qwest Corp. for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket No. 09-135, Memorandum Opinion and Order, 25 FCC Rcd 8622 (2010), at ¶¶ 29-30 ("*Qwest Phoenix Order*") (subsequent history omitted).

[27] Further Notice at ¶ 294.

in Alaska has demonstrated that the same result may be achieved when two competitors vigorously compete. At least in Alaska, Alaska Communications believes that the presence of two competitors *does* make the market sufficiently competitive that no *ex ante* price regulation is necessary. As the Eisenberg Declaration explains, the primary BDS competitors in Alaska are Alaska Communications, GCI, and AT&T Alascom, "and the competition is fierce."[28] With the recent entry of Verizon Wireless, multimodal competition for data services has expanded still further since the 2013 special access data were collected. Similarly, the presence of Alasconnect in Fairbanks adds yet another facilities-based BDS competitor to that market.[29]

Even in areas where it faces only one other competitor, Alaska Communications competes vigorously on price for the business it receives. GCI is a larger firm with a larger network than ACS. Moreover, because it is not regulated as an ILEC, GCI bears significantly fewer regulatory constraints than Alaska Communications, including almost unlimited pricing flexibility, as well as greater resources that it can devote to its sales efforts. Indeed, GCI has maintained and extended its market position notwithstanding the partial deregulation of Alaska Communications in Anchorage, Fairbanks and Juneau.

Moreover, the *Qwest Phoenix Order* does, in fact, acknowledge that, under certain conditions, such as those set forth in the Bertrand model, a duopoly market can achieve a fully competitive outcome.[30] The Bertrand model, where two firms offer identical products and customers will accept the lower price, will drive both suppliers to the competitive outcome.[31]

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[28] Declaration of David C. Eisenberg, Attachment A hereto, at 3 ("Eisenberg Declaration").

[29] *Id.*

[30] *See Qwest Phoenix Order* at ¶ 30 and n.91.

[31] *See, e.g.*, Andreu Mas-Colell, Michael D. Whinston & Jerry R. Green, *Microeconomic Theory* (Oxford Univ. Press 1995) at 388-89.

Indeed, similar conditions to those assumed under the Bertrand model are frequently present in Alaska, minimizing the Commission concerns underlying the conclusion of the *Qwest Phoenix Order*. Both Alaska Communications and GCI can offer highly substitutable BDS to their customers and the Commission has not cited to any evidence of duopoly or other non-competitive behaviors in Alaska's major population centers. Each RFP response is, in effect, a "one-shot" transaction, minimizing the incentive and opportunity for the two companies to tacitly collude over time. And a large portion of the market is composed of schools and libraries, which are required to treat price as the "primary factor" in selecting a service provider, and rural health care providers, which are required to select the most "cost-effective" solution.[32]

D. The Extensive Record in these Proceedings Reflects No Allegation of Market Failure or Anticompetitive Conduct by Alaska Communications in the Anchorage, Fairbanks, or Juneau Markets

The Commission opened this proceeding based on a Petition for Rulemaking filed in 2002 that related to alleged conduct by the Bell Operating Companies with regard to special access services.[33] The Petition, therefore, was filed seven years *before* Alaska Communications converted to price cap regulation and eight years before the Commission granted it pricing flexibility under the former framework. The Commission's reasoned 2010 decision to grant pricing flexibility to Alaska Communications for its Anchorage, Fairbanks, and Juneau service areas was based on an extensive record of longstanding competition and sunk competitive investment.[34] In the wake of the Commission's grant of Phase I and Phase II pricing flexibility, in addition to forbearance from other ILEC regulatory obligations, nothing has been filed in this

[32] *See* 47 C.F.R. §§54.503(c)(2)(ii)(B); 54.603(b)(4); 54.642(d).

[33] *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, RM-10593 (filed Oct. 15, 2002).

[34] *Alaska Pricing Flexibility Order*, at ¶ 18.

proceeding concerning Alaska Communications' special access services or other high-speed business services. Rather, competition has continued to flourish in the state, justifying more – rather than less – pricing flexibility for Alaska Communications.

Indeed, never in the entire fourteen year history of this proceeding – never since AT&T filed its original petition in 2002; never since the Commission opened its 2005 special access docket; never since Alaska Communications converted to price caps in 2009; never since Alaska Communications received Phase I and Phase II pricing flexibility in 2010; never since the Commission suspended its pricing flexibility rules in 2012; never while the Commission was designing its special access data request; never in response to the Commission's call for comments on how to analyze the data it had collected; and never yet to this day – has GCI made *even a single filing* in this proceeding claiming anticompetitive conduct by Alaska Communications with respect to any BDS customer, in any region of the state. Nor has the Commission or any other party, anywhere in this docket, cited evidence of any anticompetitive behavior in Anchorage, Fairbanks, or Juneau.

In short, this is a case of the "dog that didn't bark." Special access markets in Anchorage, Fairbanks, and Juneau – where the majority of demand for special access services is found – are vigorously competitive and functioning properly. There is simply no reason for the Commission to intervene.

II. If the Commission Decides to Regulate BDS Services in Rural or Bush Alaska, It Should Regulate the Largest Provider, GCI

Outside of Alaska Communications' Anchorage, Fairbanks, and Juneau service areas, in the Alaskan Bush, BDS competition diminishes. The Alaskan Bush, characterized by small communities, often of native Alaskans, separated by hundreds of miles of roadless wilderness, are among the most forbidding and costly to serve in the nation. As the Commission is aware,

service to the Bush is complicated by the lack of infrastructure – not only roads but also power – greatly increasing the cost of service. In short, these parts of Alaska have suffered from chronic lack of investment with little promise of change in sight.[35] The Commission expends substantial universal service support each year in order to support the region's telecommunications service providers, and the markets are clearly too small, to dispersed, and too costly to serve to support competitive terrestrial transport options.

In the Further Notice, the Commission proposes a "new regulatory framework for broadband data service that distinguishes between broadband data service providers based on market circumstances, rather than technology or the happenstance of prior Commission action and inaction."[36] Thus, the Commission proposes to deregulate BDS in areas deemed competitive; and for areas the Commission deems to be non-competitive, the Commission seeks comments on regulatory alternatives, including whether new pricing rules should apply to the "largest" provider,[37] or "any firm in the non-competitive market that has a near ubiquitous network in the local territory and rights of way,"[38] or "all BDS providers in the non-competitive area."[39]

Alaska Communications agrees that, in areas that do not satisfy the competitive markets test, it would make sense to regulate only the largest provider, in order to constrain the pricing

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[35] While Alaska Communications for years has urged the Commission to invest in middle-mile infrastructure to the Bush so that advance telecommunications capabilities may be made available there, to date the Commission has not acted to address this problem. *See, e.g., Connect America Fund*, WC Docket No. 10-90, Letter from Karen Brinkmann, Counsel for Alaska Communications, to Marlene H. Dortch, Secretary, FCC (filed Nov. 19, 2015), Attachment: "Closing the Middle Mile Gap in Alaska: A Proposed Plan of Action for All of Alaska."

[36] Further Notice at ¶ 259.

[37] *Id.* at ¶ 308.

[38] *Id.* at ¶ 309.

[39] *Id.*

behavior of any other competitor. Whether measured as a function of network reach and capabilities, or by metrics related to company size, revenues, or connections, in Alaska that provider is GCI.

A. GCI Is the Largest Telecommunications Service Provider in Alaska

By nearly any business metric, GCI is the largest telecommunications service provider in Alaska. Even by 2013, the subject year for the special access data collection, GCI claimed:

> GCI [is] Alaska's largest telecommunications company. GCI's cable plant, which provides voice, video, and broadband data services, passes 80 percent of Alaska households. GCI operates Alaska's most extensive terrestrial/subsea fiber optic network which connects not only Anchorage but also Fairbanks and Juneau/Southeast Alaska to the lower 48 states with a diversely routed, protected fiber network. GCI's TERRA-Southwest fiber/microwave system links 65 communities in the Bristol Bay and Yukon-Kuskokwim Delta to Anchorage bringing terrestrial broadband Internet access to the region for the first time. GCI's satellite network provides communications services to small towns and communities throughout rural Alaska. GCI's statewide mobile wireless network seamlessly links urban and rural Alaska.[40]

The following comparison demonstrates GCI's vastly larger size, as compared to Alaska Communications, whether measured by company size or scope overall, or with specific reference to business customers and services:

Metric	Alaska Communications	GCI
Employees	"Over 700 people"[41]	"More than 2,200 employees"[42]

[40] GCI News Release, "Denali Media Holdings Purchases CBS Affiliates in Southeast Alaska" (rel. Dec. 12, 2013), available at: http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle_Print&ID=1884491.

[41] *See* http://www.alaskacommunications.com/About-Us

[42] GCI, "Executive Team," *available at:* https://www.gci.com/about/executiveteam (visited June 27, 2016) (biography of Ron Duncan, President, CEO, and Co-Founder).

Metric	Alaska Communications	GCI
2015 Annual Revenue	$232.8 million[43]	$979 million[44]
2015 EBITDA	$55.4 million[45]	$330 million[46]
2015 Business Data Services Revenue	$98 million[47]	$269 million ("Business data services" – $142 million) ("Managed broadband" – $127 million)[48]
Market Capitalization (6/28/2015)	$86 million	$577 million
2015 Federal High Cost USF[49]	$19.6 million	$73.3 million
2015 Low Income Federal USF	$425,000	$8.9 million
2015 E-rate Federal USF	$3.4 million	$63.2 million
2015 Rural Health Care Federal USF	$12.7 million	$64.1 million

[43] Alaska Communications News Release, "Alaska Communications Reports Strong Fourth Quarter and Year-End 2015 Results" (Mar. 3, 2016), *available at:* http://www.alaskacommunications.com/-/media/Files/pdf/releases/2016/ALSK_News_2016_3_3_General.ashx ("*ACS 2015 Results*").

[44] GCI News Release, "GCI Reports Fourth Quarter 2015 Financial Results" (Mar. 2, 2016), available at: http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle_Print&ID=2145340 ("*GCI 2105 Results*").

[45] *ACS 2015 Results.*

[46] *GCI 2015 Results.*

[47] *ACS 2015 Results* (Schedule 6, Business and Wholesale Service Revenue, excluding voice).

[48] *GCI 2015 Results.* In GCI's financial results, "business services" includes "a full range of retail wireless, data, video, and voice services to businesses, governmental entities, and educational institutions and wholesale data and voice services to common carrier customers." The figure cites above is reported for the "data" subcategory. "Managed broadband" includes "data and managed services to rural schools and health organizations." GCI, SEC Form 10-K (2015) at 7.

[49] Source for all federal USF figures: USAC data.

In addition to GCI, as explained in the Eisenberg Declaration, AT&T is a Fortune 10 company, with size and scope larger than either Alaska Communications or GCI, on a national or global basis. While in the past AT&T priced BDS in recognition of the higher costs of serving Alaska, AT&T more recently has adopted a "One Rate" approach that prices its BDS offerings in Alaska at the same levels that prevail in the lower 48 states. "AT&T is an extremely efficient competitor when the customer weights price most heavily in its acceptance criteria."[50] Thus, AT&T's rates for BDS tend to reflect national rather than local market pressures.

B. GCI Possesses Unique Market Power Over Long-Haul Transport to the Alaska Bush that Is Vital to Providing BDS

GCI was founded in 1979, introduced long distance competition to the state, and has grown steadily in scale and scope since that time. Today, it boasts that it is "the largest Alaska-based communications provider as measured by revenues,"[51] with "the broadest reach of any network in the state."[52] It states that it is "the market leader in the Metro Fiber space."[53] In addition, GCI is the statewide cable television and broadband Internet access service provider, the state's second-largest wireless service provider, the owner of six television stations,[54] and one of

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[50] Eisenberg Declaration at 4.

[51] *See* http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-irhome (visited June 24, 2016).

[52] *See* https://www.gci.com/business/services/networks/network-design (visited June 24, 2016).

[53] GCI Presentation, Peter Pounds, SVP and CFO, "Deutsche Bank Leveraged Finance Conference" (Sept. 2015), at 12, *available at:* http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9NTk3NTU0fENoaWxkSUQ9MzA3NjcwfFR5cGU9MQ==&t=1 (visited June 24, 2016); *see also* Eisenberg Declaration at 3.

[54] GCI News Release, "Denali Media Holdings Closes Purchase of Three CBS Affiliates in Southeast Alaska" (July 28, 2014) (announcing purchase of three CBS broadcast stations in Southeast Alaska: KXLJ in Juneau, KTNL in Sitka and KUBD in Ketchikan), *available at:* http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle_Print&ID=1952172; GCI News Release, "Denali Media Holdings Closes Purchase of Anchorage CBS Affiliate and Southeast Alaska NBC Affiliates" (Nov. 1, 2013) (announcing purchase of CBS affiliate

only two facilities-based statewide long distance service providers. Since Alaska Communications was formed in 1999, it has steadily lost market share to GCI, and now has a substantially smaller share of the telecommunications services market than GCI.

In the Alaskan Bush, it is the ILEC that is at a persistent, historical disadvantage, based on the way that the state's telecommunications market developed and grew. Because of Alaska's vast size, forbidding climate and terrain, sparse population, and geographic isolation, its communications system developed considerably differently from that in the lower 48 states. The U.S. military built the first communications networks, which were designed for long-haul communications transport connecting to military installations.[55] Only in the 1970s were these networks privatized,[56] with the resulting RCA Alascom becoming Alaska's regulated monopoly long-distance carrier.[57] Even today, to reach the nearest Internet peering points in Oregon and Washington, all traffic must traverse one of the undersea cables operated by GCI or Alaska Communications, or one of the satellite facilities operated by GCI or AT&T.

KTVA-TV of Anchorage, and of two NBC affiliates in Southeast Alaska, KATH-TV in Juneau and KSCT-TV in Sitka), *available at:* http://ir.gci.com/phoenix.zhtml?c=95412&p=irol-newsArticle_Print&ID=1871550.

[55] *See* Heather E. Hudson, *Connecting Alaskans* (Univ. of Alaska Press 2015), at 20-37. These networks included the Washington-Alaska Military Cable and Telegraph System ("WAMCATS") built in the early 1900s; the Alaska Communication System ("ACS," unrelated to today's Alaska Communications) built in the 1930s; and White Alice and the Distant Early Warning ("DEW") Line, constructed in the 1950s during the cold war to provide early warning of attacks launched via the great circle route over the North Pole.

[56] The newly-formed RCA Alascom purchased the ACS in 1970, *id.* at 58; leased the White Alice network in 1974, *id.* at 100; and subsequently initiated satellite service to supplement its terrestrial transport network, *id.* at 116.

[57] *Id.* at 104. AT&T purchased Alascom in 1995.

Thus, the state's ILECs have thus never been the primary owners of transport facilities necessary to provide special access services, including BDS. Initially, "both local and long-distance services were provided by the military."[58] Gradually, "entrepreneurs began to build local phone networks to connect people in their communities with each other and the outside world over the military's network, later bought and extended by RCA."[59] Today, Alaska Communications is the ILEC for 49 remote communities; in those communities, it is reliant on transport services provided by AT&T Alascom, GCI or another third-party provider to interconnect with the remainder of the state, nation, and world. To the extent Alaska Communications sells BDS in those communities, for example, to schools, libraries, and rural health care providers that receive support from the Commission's universal service support mechanisms, it often integrates and resells the services of one of the facilities-based long-haul transport service providers.

While GCI began offering service in Anchorage, Fairbanks, and Juneau during the 1980s, the Alascom monopoly in rural and Bush Alaska persisted until 1995.[60] In that year, the FCC and Alaska Public Utility Commission (the forerunner of today's Regulatory Commission of Alaska) authorized GCI to deploy satellite earth stations in 56 Bush communities, and launch competitive telephone service on an experimental basis.[61] To this day, AT&T Alascom and GCI are the only two long distance service providers serving Alaska with statewide facilities. As GCI has explained previously to this Commission:

> As the largest provider of telecommunications and information services in Alaska, and one that provides local wireline, wireless, and interexchange communications,

[58] *Id.* at 181.

[59] *Id.* at 182.

[60] *Id.* at 238.

[61] *Id.* at 239.

> **GCI is the only carrier that delivers Internet and voice services nearly statewide to Alaska's governmental, commercial, and residential users.** Compared to rural incumbents which historically serve small territories, GCI is able to leverage economies of scale - both financially and in terms of physical infrastructure and connection to 'urban' networks - that are critical to overcoming the unique challenges that challenges that rural Alaska presents."[62]

GCI owns the most extensive network of statewide facilities (including the largest network of terrestrial facilities, and substantial satellite transponder capacity),[63] which it uses to deliver cable and broadcast television, wireline and wireless telecommunications, broadband Internet access, and other services throughout Alaska. GCI owns the only fiber connection to Alaska's north slope; it has leveraged $88 million in federal Broadband Initiatives Program ("BIP") grant award and loan subsidies to build its TERRA network connecting communities all over the remote southwest and northwest areas of the state, including at least four served by Alaska Communications.[64] AT&T Alascom also continues to offer satellite-based telecommunications services throughout Alaska.

The scale and scope of GCI's network is a particularly important consideration in Alaska. In seeking to evaluate "how close competition must be to place material competitive pressure on supply at a given location,"[65] the Further Notice appears to have made the unspoken assumption that a provider, once present at a given geographic point, can deliver telecommunications services on an equally competitive basis, to every other global point its customer might wish to

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[62] *Connect America Fund*, WC Docket No. 10-90, Comments of GCI (filed April 18, 2011), at 18 (emphasis added).

[63] Hudson, *Connecting Alaskans* at 239. (citing GCI's ownership of sufficient capacity on the Hughes Galaxy 18 satellite to meet rural Alaska's needs through 2022).

[64] GCI, "TERRA 2016-2017 Construction" (listing 72 remote Bush communities served), *available at:* http://terra.gci.com/maps-locations.

[65] *Id.* at ¶ 215.

reach. While this assumption may be reasonable in the lower 48 states, it may not be so in Alaska. Even if two competing carriers offer BDS in a census block in Alaska, they may not be equally capable of providing service to all possible points the customer would seek to reach. GCI has a considerably larger network statewide than Alaska Communications, in terms of both geographic reach and capacity. Thus, in many cases, GCI is better positioned to win customers, particularly where Alaska Communications is seeking to compete as a reseller on routes that are on-net for GCI. As the Eisenberg Declaration relates, to win BDS contracts, "[c]arriers must be able to provide high-speed data transmission among different business locations across the state, and between Alaska and the Lower 48 states (because the nearest Internet access point is in the Lower 48 states)."[66]

Thus, the Further Notice's characterization of market "entry and entry barriers" should be completely reversed for the Alaskan Bush. The Commission states that, "[t]he competitive provider's footprint most often includes a combination of locally-based facilities owned by the competitor and network access purchased from the regional incumbent or other competitors."[67] In Alaska, it is the ILEC, Alaska Communications, that more often must lease network access from AT&T Alascom, GCI, or another provider in rural and remote markets outside of its core Anchorage, Fairbanks, and Juneau service areas in order to provide BDS.

C. GCI Abuses Market Power in Rural and Bush Alaska

Abuse of market power by an unregulated monopolist does occur in Alaska, but the culprit is not an ILEC. While BDS competition has taken hold in urban and rural Alaska, remote Bush communities – including the 49 Bush communities where Alaska Communications is the

[66] Eisenberg Declaration at 4.

[67] Further Notice at ¶ 224.

ILEC, as well as more than 100 where it is not – must depend for service on federally funded monopoly bottleneck terrestrial transport facilities controlled and operated by GCI on an unregulated basis. In such cases, it is not the ILEC that has the potential to foreclose competitive entry, extract monopoly rents, and constrain the supply of service.

While the Commission cites assertions in the record that, "in some cases an incumbent LEC's wholesale prices can be near or above retail levels (sometimes referred to as a 'price squeeze')," in Alaska, it is GCI that consistently uses its monopoly control of terrestrial transport facilities to foreclose competition from Alaska Communications, even (perhaps especially) in remote communities where Alaska Communications is classified as the ILEC and seeks access to additional transport capacity in order to launch competitive broadband Internet access services, BDS, or others, in competition with GCI.

For example, in southwest Alaska, GCI owns the only terrestrial transport network: the publicly-funded TERRA-SW hybrid fiber optic cable-microwave network. In that remote region, it has been historically impossible to justify private investment in terrestrial transport facilities for any provider; GCI was able to overcome these barriers to entry only through an $88 million package of Broadband Initiatives Program ("BIP") loans and grants from the Rural Utilities Service. GCI profits from TERRA-SW through federal universal service subsidies for services to rural health care providers, schools and libraries. Yet despite the pre-construction BIP public funding and post-construction federal universal service subsidies, GCI operates a *de facto* monopoly, refusing to make sufficient or affordable capacity available to would-be competitors, and charging monopoly rates for wholesale access that are above the rates for satellite-based services, all in apparent violation of the nondiscrimination and interconnection requirements of BIP. As the Eisenberg Declaration explains, GCI's posted "price for 1 Mbps service on a month-

to-month basis via TERRA is $9,500/month, well above a competitive rate and reflecting its market power on these routes. Clearly, any BDS RFP with a TERRA endpoint will be extraordinarily costly for the customer and nearly impossible (without access to any competing facility) for a carrier other than GCI to win," because TERRA is a monopoly facility on the routes it serves and no other carrier can compete.[68]

Alaska Communications is the ILEC serving at least three communities served by TERRA-SW: Nondalton, Pedro Bay and Port Alsworth. AT&T's interexchange network serving communities in the TERRA-SW region is satellite-based; it owns and maintains earth stations throughout the area. Yet, Alaska Communications is unable to gain affordable access to GCI's terrestrial TERRA-SW terrestrial facilities, and the rates GCI charges are well above, not only AT&T's satellite rate for equivalent capacity, but above GCI's retail rate for the services Alaska Communications wishes to provide.

Thus, in remote and isolated markets, a lack of competitive entry does not indicate market "dominance" by the ILEC but rather, the fact that the markets are largely uneconomic to serve without substantial federal universal service support and because, for historical reasons, long-haul facilities linking Bush communities with other locations are controlled predominantly by one firm that does possess market power – GCI. GCI sustains its operation of TERRA-SW and is now expanding its unregulated monopoly terrestrial transport network into other remote areas of Alaska through inflated federal universal service subsidies it receives for services it

[68] Eisenberg Declaration at 6; GCI, "TERRA Product Descriptions and Pricing," *available at:* https://www.gci.com/~/media/files/gci/regulatory/tariffs/gci_terra_posting_effective_07_29_15_final.pdf?la=en.

provides to rural health care providers, schools and libraries.[69] Yet despite this public funding, GCI charges monopoly rates for wholesale transport services that are well above the rates for equivalent satellite-based capacity, all in apparent violation of the nondiscrimination and interconnection requirements of BIP.[70]

In this circumstance, GCI should be subject to the same federal regulations applicable to any other dominant carrier, and would-be competitors should have rights of access at just, reasonable and non-discriminatory rates, terms and conditions, not just within the Bush communities served by Alaska Communications, but across all of GCI's publicly-funded terrestrial transport facilities that can be used for BDS in the Alaskan Bush, where GCI operates today as an unregulated terrestrial transport monopolist. Further, regulating the price that GCI can charge for bottleneck essential components will bring pricing for BDS services closer to competitive levels and, in the case of GCI, reduce federal universal service support payments to more reasonable levels.

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[69] Letter from Megan Delany, GCI, to Marlene H. Dortch, Secretary, FCC, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 09-51, CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208 (filed July 30, 2012), at 2-3 ("Further deployment of modern wireless and broadband networks to additional currently unserved communities in rural Alaska . . . depends upon the provision of services to key anchor telemedicine and distance learning customers that are supported by the various programs of the Universal Service Fund as well as continued efforts to leverage this funding to secure other private funding sources.").

[70] BIP loan and grant awardees were required to "offer interconnection on reasonable rates and terms to be negotiated with requesting parties." *Notice of Funds Availability*, 74 Fed. Reg. 33104, 33111 (2009). As a loan and grant recipient GCI pledged to adhere to the policies set forth in the Commission's *Broadband Internet Policy Statement*, CC Docket Nos. 02-33 *et al.,* FCC 05-151 (rel. Sept. 23, 2005). *See id.* GCI specifically agreed to "offer wholesale and retail services to carriers and other customers that wish to provide or use broadband and other services in Service Area communities." United Utilities Inc., "TERRA-SW: Terrestrial Broadband In Southwestern Alaska," Executive Summary at 2, *available at*: http://www.ntia.doc.gov/broadbandgrants/applications/summaries/93.pdf.

Conclusion

For the foregoing reasons, the Commission should (1) not impose any *ex ante* price regulation on BDS offered in Alaska Communications' Anchorage, Fairbanks, and Juneau service areas; and (2) outside of those areas, if the Commission deems BDS markets non-competitive, regulate the largest provider in Alaska, GCI, and no others, not only within the Bush communities served by Alaska Communications, but across all of GCI's publicly-funded terrestrial transport facilities in the Alaskan Bush that can be used for BDS.

Respectfully submitted,

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Attachment A

Declaration of David C. Eisenberg, June 28, 2016

Declaration of David C. Eisenberg

I am an independent consultant and business adviser, primarily to businesses in the technology-media-telecommunications space. I consult in the areas of strategic planning, business/corporate development, marketing/market analysis, and negotiation of complex transactions. I have significant experience as a telecommunications executive in Alaska, having served as Alaska Communications' Senior Vice President Corporate Strategy, Development and Marketing from 2003-2008 and its Chief Revenue Officer from 2012-2015. Prior to joining Alaska Communications in 2003, I was Vice President Corporate Strategy/Strategic Marketing Planning for Sprint Corporation.

Based upon my experience in Alaska, I have been asked to discuss Business Data Services ("BDS") in general, the buying habits of business customers in Alaska, and the impact of competition on the pricing of BDS in Alaska.

The BDS Product Market Is Characterized By Customized Solutions Designed To Meet Diverse Business Needs

The FCC describes BDS as "typically provid[ing] dedicated symmetrical transmission speeds with performance guarantees, such as guarantees for traffic prioritization, guarantees against certain levels of frame latency, loss, and jitter to support real-time IP telephony and video applications, or guarantees on service availability and resolving outages." While this description provides one description of Business Data Services, BDS should be considered amongst a broader set of data offerings actually purchased by the business customer, and the needs of different categories of business customers based upon their size and sophistication.

When considering the Alaska business services market, a standard stratification used is among service providers: "SOHO" (Small Office/Home Office – 1-4 lines), "Small" (5-99 lines), "Mid-Sized" (100-499 lines), "Large" or "Enterprise" (500 or more lines), and "Wholesale" or "Carrier" services.

When considering the business segments' data needs, "Small Office/Home Office" and the lower end of "Small" business customers (single-rooftop) generally purchase digital subscriber line ("DSL") services from the local exchange carrier ("LEC"). These services are "best efforts" in nature, in concert with the needs of the customer. Symmetrical speeds are rarely a requirement of these customer segments although the availability of a range of download/upload speeds, often offered as a part of a Voice and Data bundle, is the norm. Their data needs are primarily for e-mail, some cloud access storage, and SaaS (*e.g.*, DropBox or Microsoft 365), and perhaps light videoconferencing needs (*e.g.*, PC-PC such as Skype). It would be rare for businesses in these categories to require Business Data Services as defined by the FCC. These "best efforts" services provided to SOHO and single-rooftop Small business customers are standard in structure, price and other terms, not customized.

However, when moving up the continuum to include multi-location Small business up through Large/Enterprise, the sophistication of data needs escalates dramatically. Some,

particularly smaller, customers in these segments may continue to utilize best efforts services where their needs allow. As the customer size increases, however, they typically require centralized data warehousing with a need for real-time access – both for upload and download of information. Symmetrical speeds become a requirement for many such businesses as employees from multiple locations seek to access data, utilize centralized applications, and communicate real-time with one another. Such trends are accelerating as entities seek to curtail the high-cost of travel (*e.g.*, fewer in-person meetings and more video-conferences) or implement higher standards in advanced applications such as telemedicine.

Generally speaking, business customers of this size purchase "solutions" rather than "technologies." The customer has a specific need to fulfill for its own particular line of business (*e.g.*, video-conferencing among its business locations) and seeks a telecommunications provider to supply either Business Data Services to enable this solution (*e.g.*, bandwidth capacity between locations) or a total solution (which includes elements beyond BDS such as software and hardware). These solutions are unique and individually tailored to the specific customer and specific business need, and pricing typically is negotiated based on the specific locations and service requirements of the customer, with service level agreements tailored to the customer's needs – the diametric opposite of the standardized products offered to "best efforts" customers.

When it comes to the purchase of BDS, it is important to note that these sophisticated customers are looking to fulfill a business need that requires specific bandwidth with specific performance characteristics. The carrier sells the customer the bandwidth requirements and the service level attributes meeting that specific business need and the applications intended by the customer. Even relatively "simple" BDS such as those used to serve bank ATM machines are purchased and integrated with other network elements and are bid as part of the overall solution.

The discussion with the customer is not generally about the technology used to fulfill the bandwidth need but, rather, the speeds and other attributes of the transmission capability that would are necessary to achieve the customer's business goals. For example, in addition to guaranteed minimum speed, traffic prioritization, and guarantee against frame latency, loss, and jitter mentioned by the Commission, the specific customer may require route diversity, redundancy or failover capabilities based upon the mission-critical nature of the services. This adds to the layers of complexity of the bid.

There is an extremely high degree of sophistication among these customers with complex needs, who typically issue extensive requests for proposals ("RFPs"), review multiple bids, and conduct related negotiation processes. Developing BDS solutions for these customers thus can demand long lead times – it is not uncommon for the purchasing process to take well over a year with competitive bids from three or more carriers. This is particularly true for the Wholesale/Carrier market where the entire contracting process is further complicated by the ultimate end-user customer (such as Federal entities or mobile wireless carriers) that often have unique network engineering and performance requirements. Additionally, Wholesale/Carrier customers are often seeking BDS to seamlessly connect with their Lower 48 networks and/or customer solutions. This invariably requires even further customization to ensure ubiquity.

As a result, the service providers in Alaska have the incentive to offer highly-customized BDS in a range of speeds and with a range of Service Level Agreements ("SLAs"). Customers

are generally agnostic as to the technology used to provide the service. The choice of technology remains with the provider, as does the inherent risk of the chosen means of providing service – be it fiber, copper, microwave, or hybrid-fiber-coaxial cable. Naturally, for certain very high speeds and for certain specific SLAs, a given technology such as fiber may be the most efficient manner for provision of the bandwidth.

Although providers deploy multiple technologies in their networks, the services and SLAs offered to customers are based upon the performance capabilities of the end-to-end service, rather than the technology itself. Whether a carrier offers a DS1, DS3, OC12, or packet-based services, the carrier provides a guarantee of the performance characteristics of the service, not the serving technology. The absence of heavy-handed regulation in the BDS sector has given competitors in Alaska the incentive and the ability to vigorously compete on service performance characteristics, meeting customer demand in innovative ways.

Competition in the BDS Market Is Driven by Quality of Service and Infrastructure

Though Alaska has fewer BDS customers than other states, the competition for that business is intense, and has driven infrastructure investment and innovation among a number of providers, particularly in the state's urban markets of Anchorage, Fairbanks, and Juneau.

In its Anchorage, Fairbanks, and Juneau service areas, Alaska Communications primarily competes with General Communication, Inc. ("GCI") and AT&T for BDS customers – and the competition is fierce. Each of these players is expected to submit bids when customers seek BDS. Quite often, entities from the Lower 48 states will bid as well, frequently seeking wholesale services in certain locations from Alaska Communications, AT&T or GCI in order to complete their bids. In some parts of Alaska, rate-of-return LECs, other competitive carriers, and non-common carriers compete for BDS contracts as well. For example, in the Fairbanks area, Alasconnect operates fiber-based infrastructure that is attractive to consumers seeking high-speed bandwidth. With the introduction of 4G mobile broadband capability, Verizon Wireless recently has introduced still more competition into the Alaska market, as evident in several responses to RFPs.

GCI, the state's dominant video provider as well as an incumbent LEC, a competitive LEC, the second-largest mobile wireless carrier, and the largest inter-exchange carrier ("IXCs"), is significantly larger than Alaska Communications. GCI reported Business Broadband Revenues at one and a half times those of Alaska Communications, and reported Business/Managed Services Revenues at more than three times those of Alaska Communications. GCI publicly reports that it is "the leader in the Metro Fiber space" and has a market capitalization of approximately $575 million compared to $86 million of Alaska Communications. GCI reports an employee base of more than 2,200, compared to Alaska Communications' roughly 700 employees. GCI's size and diversification provides the economic means for it to compete effectively in the statewide BDS market.

AT&T, with its nationwide capabilities and the scale of a Fortune 10 company, is the largest mobile wireless carrier and one of two largest IXCs in Alaska. In years past, AT&T

priced BDS in recognition of the higher costs inherent in serving Alaska – the long-haul to the Lower 48 and the long-haul between the population centers of the state. Lately, however, AT&T has adopted a "One Rate" paradigm within Alaska. "One Rate" postalizes rates and treats Alaska offerings at the same price as those of the Lower 48. In addition to its bespoke networks throughout Alaska, it has augmented its capabilities with long-haul capacity contracts with both GCI and Alaska Communications. AT&T is an extremely effective competitor when the customer weights price heavily in its acceptance criteria.

That said, with highly-sophisticated BDS customers, the weighting of price as the most important factor among the decision-making criteria has been decreasing over time. Customers are increasingly seeking solutions based upon the most attractive service levels and solutions best tailored to meet their needs. Over the past few years, for example, Managed IT Services have been requested as part of BDS contracts. Alaska Communications has been an effective competitor with AT&T and GCI because it has been able to differentiate its solutions based on the SLAs it offers and its responsiveness to customer requirements.

The Geographic Market for BDS in Alaska Is Not Limited to a Local Area

Today, the primary drivers of success in the Alaska BDS market are innovation and the ability to satisfy complex customer needs across their entire business footprint. The pricing of BDS within a small geographic area such as a census block is not descriptive of the "market" for these services. In Alaska, geographies are broad, and customers expect that their multi-location solutions will be bid in a comprehensive manner. An Enterprise bid comprising locations in Anchorage, Fairbanks and Juneau, for example, would be expected as a total package, likely incorporating a range of Managed IT Services. The BDS would be embedded within the overall quote with its individual components not itemized – it's the entire solution that matters to the customer, not the building blocks.

The impact of the state's isolation from the Lower 48 states is perhaps the most important element when discussing competition in Alaska. When it comes to the impacts of competition on pricing, Alaska has an entirely different set of characteristics from the markets in the Lower 48 states.

Carriers must be able to provide high-speed data transmission among different business locations across the state, and between Alaska and the Lower 48 states (because the nearest Internet access point is in the Lower 48 states).

Competition for Alaska BDS Has Intensified With Infrastructure Investment

The nature of BDS competition in Alaska might best be expressed through exploration of impacts of long-haul fiber investment between Alaska and the Lower 48.

Prior to 2008, three fiber optic cables linked Alaska to the Lower 48. Two of these cables were owned by GCI, with the third ("NorthStar") owned by Crest (affiliated with The

Carlyle Group). The Crest system was single-threaded (no route diversity and no carrier-diverse complete system). All three cables crossed one another at least once (no true route diversity). With the only complete, survivable system owned by GCI, there was no real carrier diversity for interested parties. Pricing was up to 100 times the pricing in the Lower 48 for similar bandwidth purchases, and service quality was lacking.

In 2008, Alaska Communications purchased the NorthStar asset from Crest and completed construction of AKORN, a fourth fiber optic cable linking Alaska to the Lower 48. AKORN uniquely provided route diversity, landing in Oregon rather than Washington state. With the introduction of route diversity and a competitive service provider, the landscape for bandwidth purchases in Alaska changed dramatically.

Within a short period of time, the market for bandwidth increased by orders of magnitude and pricing began to drop to near-Lower 48 levels (in particular, as customers came off of mid- to long-term contracts). Within just a few years, pricing had dropped to about one-third of pre-AKORN levels for comparable capacities. As the pricing dropped and customers realized the benefits of high-quality, scalable bandwidth, needs for capacity continued to rise – and continue to rise at levels which far exceed those of Lower 48 levels still today. Customers have seen the benefits of BDS pricing and related service offerings only because of the substantial investment made in facilities to link them to the world.

Outside of the Anchorage, Fairbanks, and Juneau Markets, GCI Operates with Substantial Market Power

Outside of Anchorage, Fairbanks, and Juneau and their surrounding rural markets, approximately 188 small, isolated communities dot the undeveloped landscape of the Alaskan Bush. These communities are not connected to the state's road system or power grid, and are often separated from the state's core infrastructure – and each other – by hundreds of miles of roadless wilderness. These communities are too small and costly to reach for competition to take hold; indeed, the Commission expends tens or hundreds of millions of dollars in federal universal service support, not only through the Connect America Fund high cost mechanism, but also through the schools and libraries ("E-rate") and rural health care support mechanisms, to help offset the high costs of service in these communities.

In these communities, GCI owns and controls the largest terrestrial network of long haul facilities necessary to deliver BDS. Historically, ILECs grew in the Alaskan Bush only after the military and (later) Alascom and GCI deployed long haul transport facilities that connected these communities to the outside world. Until 1995, Alascom operated as a monopoly long distance provider using satellite service to provide ubiquitous coverage in the state. At that time, the FCC authorized GCI to deploy a limited number of satellite earth stations in the Alaska Bush and begin providing competitive long distance services on an experimental basis. Thus, unlike in the lower 48 states, Alaska's ILECs have never been the primary owner of long haul transport facilities that interconnect their communities one to another. Even today, GCI and AT&T are the only two certificated interexchange carriers in Alaska that can provide service on a facilities basis virtually statewide.

GCI has steadily grown its network of Bush transport facilities, gaining an $88 million package of federal grant award funding and subsidized loans to construct TERRA-SW, a monopoly transport network built to provide terrestrial transport links to 56 Bush communities in the remote southwest region of Alaska. GCI's price for 1 Mbps service on a month-to-month basis via TERRA is $9,500/month, well above a competitive rate and reflecting its market power on these routes. Clearly, any BDS RFP with a TERRA endpoint will be extraordinarily costly for the customer and nearly impossible (without access to any competing facility) for a carrier other than GCI to win.

Today, while AT&T Alascom continues to offer satellite-based transport services to and from Alaska's Bush communities, GCI operates the largest network of terrestrial long haul transport facilities, which are essential for delivering BDS, in the state. It operates as a functional monopoly, without any *ex ante* price regulation of its BDS or other wholesale transport services, including BDS, from the Commission.

Conclusion

In summary, there is a high degree of competition across Alaska's urban markets of Anchorage, Fairbanks, and Juneau. Business Data Services are generally sought after by highly sophisticated customers through extremely complex RFPs demanding bespoke solutions. Additionally, any increase in regulation would negatively impact the business case of those seeking to invest in Alaska – we cannot run the risk of discouraging further expansion within the state.

Outside of those markets, in the Alaskan Bush, the story is very different. There, GCI operates as functional monopoly, using its market power to charge exorbitant rates for service utilizing its monopoly facilities.

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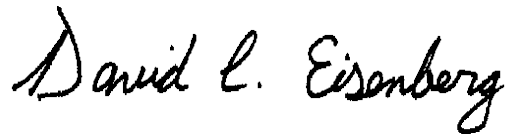
I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on June 28, 2016.



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